

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL MAJOR, et al.,

Plaintiffs,

v.

STOCKER, SMITH, LUCIANI & STAUB,
et al.,

Defendants.

No. CV-09-0140-FVS

ORDER

Before the Court are Plaintiffs' motions to disqualify Judge Whaley (Ct. Rec. 2), for an order of default against Defendant Hodgson (Ct. Rec. 13), for summary judgment (Ct. Rec. 16), and for sanctions (Ct. Rec. 25). Plaintiffs are proceeding pro se. Defendants Stocker, Smith, Luciani & Staub and Bohrsen & Stowe are represented by Steven Robert Stocker, Defendant Maxey Law Office is represented by Andrew Charles Bohrsen, and Defendant Mark D. Hodgson, attorney at law, is representing himself.

I. Motion to Disqualify Judge

Upon filing the instant lawsuit, Plaintiffs instantly filed a motion requesting that Judge Whaley be disqualified from the case. (Ct. Rec. 2). Because this case has been assigned to the undersigned judicial officer, not Judge Whaley, Plaintiffs' motion to disqualify Judge Whaley (Ct. Rec. 2) is moot.

II. Motion for an Order of Default

On June 2, 2009, Plaintiffs filed a motion for an order of default against Defendant Mark D. Hodgson, citing his failure to submit an answer within 20 days of service of the complaint. (Ct. Rec. 13). However, Mr. Hodgson, an attorney, appeared on June 9, 2009, by joining in Defendants' pending joint motion to dismiss. (Ct. Rec. 18). Mr. Hodgson is not in default with respect to this lawsuit. See LR 55.1. Accordingly, Plaintiffs' motion for an order of default against Mr. Hodgson (Ct. Rec. 13) is DENIED.

III. Motion for Summary Judgment

On June 3, 2009, Plaintiffs submitted a motion for summary judgment. (Ct. Rec. 16). However, Plaintiffs failed to follow this Court's local rules pertaining to motion practice and motions for summary judgment. Specifically, Plaintiffs did not file a separate memorandum setting forth the points and authorities relied upon in support of the motion and failed to "set forth separately from the memorandum of law, and in full, the specific facts relied upon in support of the motion." See LR 7.1, 56.1. "A failure to timely file a memorandum of points and authorities in support of or in opposition to any motion may be considered by the Court as consent on the part of the party failing to file such memorandum to the entry of an Order adverse to the party in default." LR. 7.1(h)(5). Based on the foregoing, Plaintiffs' June 3, 2009, motion for summary judgment (Ct. Rec. 16) is DENIED.

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IV. Motion for Sanctions

On June 16, 2009, Plaintiffs filed a motion for sanctions. (Ct. Rec. 25). Plaintiffs' basis for their request for sanctions is that Defendants "intend to have their motion to dismiss regarded as . . . a summary judgment motion." (Ct. Rec. 25). Plaintiffs cite "CR 56(g)" in support of their sanctions request. Fed. R. Civ. P. 56(g) provides that the Court must order sanctions if a party submits an affidavit "in bad faith or solely for delay." Plaintiffs have not alleged nor shown that an affidavit filed by Defendants was submitted in bad faith or solely for delay. Therefore, Plaintiffs' motion for sanctions (Ct. Rec. 25) is DENIED.

V. Defendants' Joint Motion to Dismiss

On June 9, 2009, Defendants jointly moved the Court to dismiss the instant matter for lack of jurisdiction. (Ct. Rec. 18). Defendants noted the motion for oral argument on July 9, 2009. (Ct. Rec. 20). However, pursuant to this Court's local rules, if a motion is dispositive, "the date of the hearing [shall be] at least fifty (50) days after filing of the motion." LR 7.1(h)(1). Moreover, if an opposing party is a civil pro se litigant, "the civil pro se litigant shall have thirty (30) days . . . within which to serve and file a responsive memorandum to the dispositive motion." LR 7.1(c).

While it appears that Plaintiffs have already filed their response to Defendants' motion to dismiss (Ct. Rec. 28), the hearing date noted by Defendants is out of compliance with this Court's local rules. Based on the lack of compliance by Defendants, and pursuant to this Court's authority under Local Rule 7.1(h)(3), the hearing on

1 Defendants' joint motion to dismiss is VACATED. The Court shall
2 address the motion to dismiss, without oral presentation, on August
3 10, 2009.

4 The Court being fully advised, it is **HEREBY ORDERED AS FOLLOWS:**

5 1. Plaintiffs' motion to disqualify Judge Whaley (**Ct. Rec. 2**) is
6 **DENIED as moot.**

7 2. Plaintiffs' motion for an order of default against Mr.
8 Hodgson (**Ct. Rec. 13**) is **DENIED.**

9 3. Plaintiffs' motion for summary judgment (**Ct. Rec. 16**) is
10 **DENIED.**

11 4. Plaintiffs' motion for sanctions (**Ct. Rec. 25**) is **DENIED.**

12 5. The hearing on Defendants' June 9, 2009, joint motion to
13 dismiss is **VACATED.** The Court shall address the motion, without oral
14 presentation, on **August 10, 2009.**

15 6. A scheduling conference shall be set, if necessary, following
16 the Court's decision on Defendants' pending motion to dismiss.

17 **IT IS SO ORDERED.** The District Court Executive is hereby
18 directed to enter this Order and furnish copies to counsel and to
19 Plaintiffs.

20 **DATED** this 18th day of June, 2009.

21 S/Fred Van Sickle
22 Fred Van Sickle
23 Senior United States District Judge
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